FILED
NOV 12 1969
JOHN F. DAVIS, CLERK

No. 239

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

VINCENT COLLETTI and SMILE GUAJARDO,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITIONERS' REPLY TO THE STATE'S ARGUMENT.

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1.

The prosecutor suppressed evidence possibly favorable to Petitioners.

First, we point out that the Respondent's argument makes certain factual assertions not borne out by the Record. For example, Respondent states that petitioner Colletti was arrested with the victim's "money in his sweater pocket." (State's Br. 4). Such is not evidence. The victim never identified any money taken from Colletti

as being hers. She was not asked to identify the money. Nor was Colletti found "red-handed," as the State argued. He was away from the home, in an area where construction men were working. Thus, Colletti was neither caught "red-handed", nor was any money belonging to the victim found on his person.

Uniquely enough, Respondent does not deny that the State's Attorney made it a deliberate and fixed policy not to preserve grand jury testimony. However, if the motive of the State's Attorney is to prevent use of grand jury testimony for purposes of possible impeachment, then, a showing has been made of suppression of evidence and the impeachment of Mrs. Birdsong, the victim, was something less than it might have been. The jury was deliberating the case upwards of eight hours, and certainly it cannot be said that the case was proven without any doubt.

We submit the practice of the State's Attorney of DuPage County, Illinois is dangerous to the fair administration of criminal justice.

2.

Petitioner Colletti was prejudiced by the introduction into evidence of his co-defendant's statements, made outside his presence.

Bruton v. *United States,* 391 U.S. 123, stands squarely for the proposition that an out-of-court statement made by one defendant may not be introduced against another.

At first, the trial judge sustained Colletti's objections to the statement of Guajardo. Later, the trial judge changed his ruling and allowed the evidence to go in without any limitation as to Colletti. The Appellate Court ruled that the "evidence was improperly admitted" (App.

A. p. 3a), but determined that Colletti could not be prejudiced. The Appellate Court also stated as its reason that it was not the State who introduced the prejudicial evidence, but the co-defendant, Guajardo. It matters little to a defendant who is prejudiced in his right to a fair trial from which source the contaminated evidence comes.

If *Bruton* is to have any viability, it should be applied in this case. The argument Respondent makes to the effect that Colletti *might not* have been the person referred to in Guajardo's out-of-court statement is patent nonsense.

CONCLUSION.

For the reasons set out, certiorari should be granted.

Respectfully submitted,

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